

Date of decision: 8-3-96

For Approval and Signature:

The Hon'ble Mr.Justice N.J.Pandya

The Hon'ble Mr.Justice A.R.Dave

1. Whether Reporters of Local Papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India,1950 or any o..

thereunder?
5. Whether it is to be circulated to the Civil Judge?

Mr.V.M.Chokshi, L.A. for respondent no.2

Mr.R.H.Mehta, L.A. for respondent no.3

Name of respondent no.1 is deleted.

Appellants served

Coram: N.J.Pandya & A.R.Dave,JJ.

March 8,1996

ORAL JUDGMENT (Per N.J.Pandya,J.)

This appeal arises out of the judgment given by
the Motor Accident Claims Tribunal (Main), Sabarkantha at

Himmatnagar in Claim Petition No.166 of 1980. The judgment was delivered on 31st December 1982.

2. The incident leading to the filing of the petition occurred on 4-6-1980 at about 3.00 p.m. It involved two vehicles. One was a motor truck bearing Registration No.GTD 4153 and another Ambassador Car (Taxi) bearing Registration No.GRS 4986.

3. The petition is preferred by the heirs of the deceased taxi driver, who died as a result of the incident. Naturally, therefore, to the extent to which the taxi driver was to be held responsible for the incident, the claimant will not get compensation. The Tribunal, among other things, has held that the deceased was responsible to the extent of 50% and has proceeded to assess the claim accordingly.

4. The learned tribunal Judge, after discussing the evidence at length, has finally come to the conclusion that against the claim for Rs.1,20,000/- the amount that could be paid by way of compensation is Rs.1,09,500/- and it was rounded off to Rs.1,10,000/-. However, as the learned Judge held the deceased taxi driver to be negligent to the extent of 50%, the claimant would be entitled to only half of the said amount.

5. So far as respondent no.3 Insurance Company is concerned, their liability in any case is limited to Rs.50,000/- only as per the contract of insurance. Needless to say, the appeal is filed challenging the said finding as to the negligence of the deceased taxi driver.

6. The point, therefore, required to be considered by us is whether the taxi driver could have been held responsible for the incident, and if yes, to what extent? We are of the opinion that at the most he should have been negligent to the extent of 25% only.

7. The reason is that the circumstances brought out by panchnama Exh.55 drawn on the date of the incident at about 5.15 p.m. clearly indicates that of the 22' tar-surface of the road, the truck was occupying more than half portion thereof. This had necessarily left lesser portion available for the taxi driver to negotiate that part of the road safely. However, to the extent to which on the other side of the road there was 4' kachha road available, as indicated in the panchnama, would have left sufficient room for him to pass by the truck without causing the incident.

8. The Truck is found on the right in the middle of the road even after the incident and the taxi, as a result of the impact, which was proceeding from south to north, is found facing towards east, almost occupying the road horizontally as described by the learned Judge, that is to say, it was lying across the road.

9. The further indication of the manner in which the incident happened can be found from the fact that both the vehicles had received extensive damage on the respective right sides. This would mean that, they had come in contact after they passed by each other and their front portion had crossed and thereafter, the remaining portion of the respective vehicles came in contact. Here again, this would be the position because usually the front portion of the truck is narrow than the wagon portion and therefore, the impact is the result of truck occupying larger portion of the road which, in my opinion, could have safely avoided by the taxi driver also, if he had exercised due care and caution in taking his taxi over to the left side and if necessary, to move over to the shoulder of the road which had, as stated earlier, width of 4'. In my opinion, therefore, the contribution of the deceased can be 25% only. Thus the amount now payable to the claimant-appellants will be Rs.27,500/-. The total amount thus payable comes to Rs.82,500/-. It is ofcourse, with proportionate cost and interest, as awarded by the trial Court. It is clarified that the liability of the Insurance Company could be to the extent of 50% only. The appeal is partly allowed with costs.
